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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/802,835

03/08/2001

Andrew P. Lull

1963/US

8027

80705

7590

03/05/2009

Nautilus, Inc.  
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EXAMINER

AMERSON, LORI BAKER

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

03/05/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/802,835	<b>Applicant(s)</b> LULL ET AL.	
	<b>Examiner</b> Lori Amerson	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-12 and 73-99 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6 and 73-99 is/are rejected.
- 7) ☒ Claim(s) 7-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                        |                                                                          |
|----------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)                  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application        |
| Paper No(s)/Mail Date <u>12/11/08</u> .                                                | 6) <input checked="" type="checkbox"/> Other: <u>foreign reference</u> . |

## DETAILED ACTION

### *Specification*

The disclosure is objected to because of the following informalities: It is the Examiner's position that Applicant has evoked sixth paragraph, means-plus-function language to define Applicant's invention. Therefore the Examiner requires the Applicant to amend the specification pursuant to 37 CFR 1.75(d) and MPEP 608.01(o) to explicitly state, with reference to the terms and phrases of the claim element, what structure, materials, and acts perform the function recited in the claim element. Please note that the MPEP clearly states, "Even if the disclosure implicitly sets forth the structure, materials, or acts corresponding to the means-(or step-) plus-function claim element in compliance with 35 U.S.C. 112, first and second paragraphs, the PTO may still require the applicant to amend the specification pursuant to 37 CFR 1.75(d) and MPEP 608.01(o)...". (Also see **MPEP 2181** (Rev. 1, Feb.2000)) *Wolfensperger*, 302 F.2d at 955, 133 USPQ at 542. Appropriate correction is required.

Appropriate correction is required.

### *Claim Objections*

Claims 7-12 are objected to because of the following informalities: It is the Examiner's position that Applicant has evoked sixth paragraph, means-plus-function language to define Applicant's invention. Therefore the Examiner has objected to the claims for the reasons set forth above in the objection to the specification.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6, 73 and 78-82, 84-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taiwan Patent No. 379572Y. The prior art reference discloses an exercise unit having a frame 22, 79; a seat positioned on the frame 74, 76; a resistance engine 61 attached to the frame; an actuator 45 attached to the engine where the engine provides a constant load, and the actuator has a cable 61; and a load adjustment mechanism 40 is engaged with the engine; at least one adjustable position arm structure attached to the frame 46 (see figure 1); the arm structure configured to cooperate with the actuator for adjustments (see figure below); the arm structure including a cable guide structure and pulley 64, 61. The prior art discloses all of the limitations except for the resistance being elastomere springs. The claim would have been obvious because the substitution of one known resistance element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

3. Claims 77 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taiwan Patent No. 379572Y as applied to claims 6 and 73 above further in view of Olschansky et al. The prior art reference discloses all of the limitations except for the load adjustment being a rotary crank. Thus, Olschansky et al teach a rotary crank

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assembly 171. The claim would have been obvious because the substitution of one known resistance element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

### ***Conclusion***

Claims 7-12 allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Monday-Friday, 8am-5pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

4.

/Lori Amerson/  
Primary Examiner, Art Unit 3764